

### 1 3.5 CULTURAL AND PALEONTOLOGICAL RESOURCES

CULTURAL AND PALEONTOLOGICAL RESOURCES - Would the Project:	Potentially Significant Impact	Less Than Significant with Mitigation	Less Than Significant Impact	No Impact
a) Cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to § 15064.5?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Cause a substantial adverse change in the significance of a tribal cultural resource as defined in Public Resources Code section 21074?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Disturb any human remains, including those interred outside of formal cemeteries?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

#### 2 3.5.1 Environmental Setting

##### 3 3.5.1.1 Archaeological Resources

4 The general Project area is sensitive for archaeological resources. A records search  
5 conducted in January 2013, by the South Coast Information Center (SCIC) using a  
6 0.25-mile radius around the Project site, identified one archaeological site, CS-SDI-  
7 16885. This site is located east of the beach valve pit (also referred to as “vault” by  
8 Conejo Archaeological Consultants [Conejo] in this section) and outside the footprint of  
9 the proposed work. As stated in a January 21, 2013, letter report prepared by Conejo  
10 (see Appendix K):

11 *CA-SDI is a small, sparse scatter of artifacts with shell on a bluff overlooking the*  
12 *western portion of Agua Hedionda lagoon. The site was first recorded by Gallegos &*  
13 *Associates in 2003 (James et al 2003). Tift (2004) indicates that the site is probably*  
14 *associated with CA-SDI-6751.*

15 As reported by Smallwood (2005, as described in Conejo 2013 [Appendix K]):

16 *Historic photographs of the EPS [Encina Power Station] revealed that prior to its*  
17 *construction the entire property had been graded, some areas were leveled and*  
18 *filled, a stream was channelized, the lagoon was dredged, and a large underground*  
19 *intake was constructed to bring water into the plant from the ocean.... In short, the*  
20 *entire EPS property has received a high level of disturbance. Geological borings in*  
21 *the area revealed that the soils at Site CA-SDI-16885 are composed of reddish*

1 brown sandy terrace material that has been mechanically re-deposited as fill to a  
2 depth of approximately 2.5 to 10 feet (*ibid.*). In light of the information obtained from  
3 historic photographs and the results of the geological borings, it is apparent that  
4 these surface artifacts were mechanically re-deposited during the previous grading  
5 that occurred on the EPS property, beginning in the 1950s. Artifacts may be present  
6 subsurface in the fill soils at this location, but it has been determined that the  
7 artifacts observed at the site do not exhibit any contextual integrity. However,  
8 additional artifacts or archaeological deposits may exist subsurface in undisturbed  
9 soils near Fuel Oil Tanks #2 and #3.

10 The Agua Hedionda lagoon lies in an area where, at least during the Late Prehistoric  
11 and Protohistoric periods, the traditional territories of two Native American groups,  
12 the Luiseno and the Kumeyaay, may have overlapped.... In any case, the site is  
13 indicative of prehistoric occupation, food processing activities, and subsistence  
14 strategies associated with the lagoon and terrace resources.

15 The exact location of the second site, CA-SDI-210, is unclear. A review of Google  
16 Earth's aerial coverage of the EPS indicated that CA-SDI-210's estimated site location  
17 was subject to extensive grading during construction of the existing plant. As a result,  
18 buried intact deposits associated with CA-SDI-210 may also occur within the EPS.

19 According to Conejo, eight archaeological investigations have been conducted within a  
20 0.25-mile radius of the Project site, three of which included sections of the on-land  
21 portion of the Project area consisting of the beach and Carlsbad Boulevard. These  
22 archaeological investigations were conducted by Byrd and O'Neill in 2002, Polan in  
23 1981, and Woodward and Stammerjohan in 1985. Guerrero, Stropes, and Gallegos's  
24 archaeological investigation in 2004 was conducted within the EPS, but does not  
25 include the current Project site.

#### 26 3.5.1.2 Tribal Cultural Resources

#### 27 **Native American Heritage Commission**

28 The Native American Heritage Commission (NAHC) searched its Sacred Lands File for  
29 Native American cultural sites and found no occurrences within 0.5 mile of the Project  
30 site (NAHC letter to Conejo dated January 11, 2013; see Appendix K). The NAHC also  
31 noted that the area around Agua Hedionda Lagoon is very culturally sensitive and that a  
32 known underwater village is located several miles north of the site.

#### 33 **Native American Representatives**

34 The NAHC provided Conejo with a list of Native American representatives who could  
35 potentially provide important information on cultural sites near the Project site. On  
36 January 30, 2013, Conejo contacted the Native American representatives on the NAHC

list; to date, three responses have been received (see Appendix K for Native American communication records). In a February 20, 2013, letter to Conejo, the Pala Tribal Historic Preservation Office indicated that the MOT is not within the recognized tribal Traditional Use Area and requested to be kept informed of documentation of cultural sites and other Project information. A representative of the San Luis Rey Band of Mission Indians also contacted Conejo via telephone. The representative explained that several Native American sites are located around the Agua Hedionda Lagoon, stated that they have seen scattered marine shell within the power plant, and opined that, given the area's archaeological sensitivity, a Native American should monitor any earth disturbances associated with the Project even in previously disturbed onshore areas. In a March 5, 2013, letter to Conejo, the Rincon Band of Luiseno Indians communicated its concerns regarding the potential for cultural resource finds within the Luiseno Aboriginal Territory, in addition to their desire for a Native American to monitor any archaeological surveys or ground disturbance at the Project site.

### 3.5.1.3 Historical Resources

#### **Federal, State, and Local Historical Listings**

As reported by Conejo, the National Register of Historic Places (NRHP) listings include no properties within or adjacent to the Project site. No California Historical Landmarks, California Register Historical Properties, or California Points of Historical Interest are located within or adjacent to the Project site. Additionally, no historical landmarks designated by the City of Carlsbad are located within or adjacent to the Project site.

#### **CSLC's Shipwreck Database**

Conejo (2013) conducted a review of the SCIC's shipwreck database, which identified no shipwrecks within a 0.25-mile radius of the Project site. The CSLC Shipwreck Database lists 67 shipwrecks for San Diego County and the closest shipwrecks to the EPS are listed in Table 3.5-1 and shown in Figure 3.5-1 (CSLC 2013).

**Table 3.5-1. Shipwrecks near the Project Site**

Ship Name	George W. Hind	Glen Mayne	Ardor	Nomad
Type	Bark	Barge	?	?
Year Built	1919	1918	?	?
Year Sunk	1936	1939	1945	1943
Cause	Foundered	Foundered	?	?
Tonnage	1389	431	?	?
Approximate Distance from EPS	2 miles, NW	0.6 mile, south	1.2 miles, NNW	1.2 miles, NNW



Figure 3.5-1. CSLC Shipwreck Database Map

**Cultural Resources Evaluation & Department of Parks and Recreation Primary Record 37-032953.**

The MOT was evaluated by Laura S. White, M. A., Robert White, and David Van Horn Ph. D., of John Minch and Associates, Inc. in February of 2013 for significance using both NRHP and CEQA criteria (provided in Appendix K). The findings of the evaluation were reported in “A Cultural Resource Evaluation of the Cabrillo Power I LLC Encina Site Offshore Marine Oil Terminal, Carlsbad, San Diego County” and on the appropriate Department of Parks and Recreation 523 series forms submitted to the SCIC at San Diego State University (Appendix K). The MOT was assigned Primary Record Number 37-032953, and a summary of the findings are as follows.

*As for Criterion A of the NRHP, the MOT is not associated with any event important in the history of United States. Terminals such as these were common for water-cooled, coastal power plants that were originally designed to burn fuel oil to generate electricity. They are currently utilized in the off-loading of crude oil for refineries along the southern California coast. That is, submarine pipelines are not unique in their role of conveying petroleum from ships/barges to land installations or into land-based distribution networks. As for Criterion B, the MOT is not associated with the lives of any individual important to national history. As for Criterion C, the pipeline itself comprises prefabricated sections of concrete jacketed steel pipe. The pipe is of robust construction but of standard design. The mooring anchors are of standard design (Danforth) and are modern. The vault and tunnel are devoid of any significant architectural features. The rip-rap jetty is also ubiquitous in nature. None of the components of the MOT are considered the work of a master and there is no evidence that unique methods or materials were utilized in their construction. As per Criterion D, given the utilitarian uses of MOT, it is highly unlikely that it has the potential to yield additional information pertinent to national history. Consequently, the MOT, including the eight modern anchors that are less than 50 years of age, does not appear significant pursuant to NHRP criteria.*

**3.5.1.4 Paleontological Resources**

The following information is from the California Energy Commission (CEC) Final Staff Assessment (CEC 2009) for the CECP. Given the proximate location of the Project site to the CECP site (which is within the northeast section of the EPS), similar paleontological resources (described below) are expected to be found.

*Pleistocene age paralic deposits, which represent all soils mapped at the surface of the CECP power plant site and the linear route, are generally considered to have a high paleontological sensitivity. However, all fossils in the San Diego Natural History Museum (SDNHM) collection from terrace sediments in the area were recovered from units on older wave-cut benches at higher elevations inland from the site. The*

1 Eocene age Santiago Formation, which has been mapped in the floor of the current  
2 tank farm, is also highly sensitive. Furthermore, fossil remains have been  
3 documented from the nearby Carlsbad State Beach. The nearest documented fossil  
4 locality is approximately 500 to 750 feet south of the ocean-water pipeline intake and  
5 discharge locations.

6 Many paleontological sites are documented within 3 miles of the CECP Project area.  
7 The SDNHM collection contains specimens from 113 localities, including 30 from  
8 Pleistocene paralic deposits and 58 from the Santiago Formation. The Quaternary  
9 fossils consist of marine invertebrates, such as worms, bryzoans, foraminifers, tusk  
10 shells, ostracods, barnacles, crabs, snails, clams, oysters, pectens, sand dollars,  
11 and sea urchins, as well as continental vertebrates, such as proboscideans  
12 (mammoth and elephants), turkeys, rodents, tapirs, horses, camels, deer, and  
13 bison. The specimens from the Santiago Formation were collected from marine,  
14 lagoonal, estuarine and fluvial siltstones and sandstones. The SDNHM collection  
15 also includes specimens from two sites at Carlsbad State Beach. The localities are  
16 approximately 1,600 feet and 4,000 feet southwest of the 23-acre CECP site, and  
17 have produced vertebrate fossils of terrestrial mammals, including oreodonts (now  
18 extinct plant-eaters distantly related to pigs, hogs, peccaries and hippopotamuses).  
19 The nearest of these fossil localities is approximately 500 to 750 feet south of the  
20 ocean-water pipeline intake and discharge locations. The reported source from  
21 which the fossils were recovered is fluvial sandstone of the Oligocene-age Sespe or  
22 Vaqueros Formations.

23 Although the age and geologic unit designation is in disagreement with previous  
24 geologic mapping in the area, the Tertiary sediments hosting the vertebrate fossils is  
25 considered to be equivalent to the marine deposits (mapped as Santiago Formation)  
26 that underlie Quaternary terrace deposits at the CECP site.

27 Marine invertebrate fossils, including mollusks, crustaceans and echinoids, and  
28 marine vertebrates, including sharks, rays and bony fish, have been recovered by  
29 the San Bernardino County Museum from Pleistocene terrace deposits. No fossil  
30 locality is within one mile of the CECP site, however. Terrestrial mammal remains,  
31 including camel, horse and mammoth, have been recovered from wave-cut bench  
32 sediments that are older than those on the power plant site. The Natural History  
33 Museum of Los Angeles County collection does not contain vertebrate fossil remains  
34 from the Carlsbad area. The museum does consider the potential for encountering  
35 significant vertebrate fossils in Quaternary terrace deposits near the surface and in  
36 older sediments in deeper excavations to be low and high, respectively. The fossil  
37 records website maintained by the University of California - Museum of Paleontology  
38 indicates that several gastropod specimens of Quaternary age have been recovered  
39 from the Carlsbad and Agua Hedionda lagoon areas.

## 1 3.5.2 Regulatory Setting

### 2 3.5.2.1 Federal and State

3 Federal and State laws and regulations pertaining to this issue area and relevant to the  
4 Project are identified in Table 3.5-2.

**Table 3.5-2. Laws, Regulations, and Policies (Cultural and Paleontological)**

<b>U.S.</b>	Archaeological and Historic Preservation Act (AHPA)	The AHPA provides for the preservation of historical and archaeological data that might be irreparably lost or destroyed as a result of (1) flooding, the building of access roads, the erection of workmen's communities, the relocation of railroads and highways, and other alterations of terrain caused by the construction of a dam by an agency of the U.S. or by any private person or corporation holding a license issued by any such agency; or (2) any alteration of the terrain caused as a result of a Federal construction project or federally licensed project, activity, or program. This Act requires Federal agencies to notify the Secretary of the Interior when they find that any federally permitted activity or program may cause irreparable loss or destruction of significant scientific, prehistoric, historical, or archaeological data. The AHPA built upon the national policy, set out in the Historic Sites Act of 1935, "...to provide for the preservation of historic American sites, buildings, objects, and antiquities of national significance...."
<b>U.S.</b>	Archaeological Resources Protection Act (ARPA)	The ARPA states that archaeological resources on public or Indian lands are an accessible and irreplaceable part of the nation's heritage and: <ul style="list-style-type: none"> <li>• Establishes protection for archaeological resources to prevent loss and destruction due to uncontrolled excavations and pillaging;</li> <li>• Encourages increased cooperation and exchange of information between government authorities, the professional archaeological community, and private individuals having collections of archaeological resources prior to the enactment of this Act;</li> <li>• Establishes permit procedures to permit excavation or removal of archaeological resources (and associated activities) located on public or Indian land; and</li> <li>• Defines excavation, removal, damage, or other alteration or defacing of archaeological resources as a "prohibited act" and provides for criminal and monetary rewards to be paid to individuals furnishing information leading to the finding of a civil violation or conviction of a criminal violator.</li> </ul> ARPA has both enforcement and permitting components. The enforcement provision provides for the imposition of both criminal and civil penalties against violators of the Act. The ARPA's permitting component allows for recovery of certain artifacts consistent with the standards and requirements of the National Park Service (NPS) Federal Archeology Program.
<b>U.S.</b>	National Historic Preservation Act (NHPA) (16 USC 470 et seq.)	This applies only to Federal undertakings. Archaeological resources are protected through the NHPA, as amended, and its implementing regulation, Protection of Historic Properties (36 CFR 800), the AHPA, and the ARPA. This Act presents a general policy of supporting and encouraging the preservation of prehistoric and historic resources for present and future generations by directing Federal agencies to assume responsibility for considering the historic resources in their activities. The NHPA requires that Federal agencies consider and evaluate the effect that Federal projects may have on historic properties under their jurisdiction. A Traditional Cultural Property (TCP) is one that is eligible for the National Register of Historic Places (NRHP) because of its association with the cultural practices or beliefs of a living community. The State implements the



**Table 3.5-2. Laws, Regulations, and Policies (Cultural and Paleontological)**

		NHPA through its statewide comprehensive cultural resource surveys and preservation programs. The California Office of Historic Preservation (OHP), within the California Department of Parks and Recreation, implements the policies of the NHPA on a statewide level and advises Federal agencies regarding potential effects on historic properties. The OHP also maintains the California Historic Resources Inventory. The State Historic Preservation Officer (SHPO) is an appointed official who implements historic preservation programs within the State's jurisdictions, including commenting on Federal undertakings.
<b>U.S.</b>	Other	<ul style="list-style-type: none"> <li>• Executive Order 13007, "Indian Sacred Sites," requires that Federal agencies with legal or administrative responsibility for management of Federal lands, "to the extent practicable permitted by law, and not clearly inconsistent with essential agency functions, to: (1) accommodate access to, and ceremonial use of, Indian sacred sites by Indian religious practitioners; and (2) avoid adversely affecting the physical integrity of such sacred sites."</li> <li>• Executive Order 13158 requires Federal agencies to (1) identify actions that affect natural or cultural resources that are within a Marine Protected Area (MPA); and (2) in taking such actions, to avoid harm to the natural and cultural resources that are protected by a MPA.</li> <li>• NPS Abandoned Shipwreck Act of 1987 (43 USC 2101–2106). Under this Act, states have the responsibility for management of living and nonliving resources in State waters and submerged lands, including certain abandoned shipwrecks. The NPS has issued guidelines that are intended to: maximize the enhancement of cultural resources; foster a partnership among sport divers, fishermen, archeologists, sailors, and other interests to manage shipwreck resources of the states and the U.S.; facilitate access and utilization by recreational interests; and recognize the interests of individuals and groups engaged in shipwreck discovery and salvage. Specific provisions of the Act's guidelines include procedures for locating and identifying shipwrecks, methods for determining which shipwrecks are historic, and preservation and long-term management of historic shipwrecks.</li> </ul>
<b>CA</b>	CEQA (Pub. Resources Code, § 21000 et seq.)	As the CEQA lead agency, the CSLC is responsible for complying with all provisions of the CEQA and State CEQA Guidelines that relate to "historical resources." A historical resource includes: (1) a resource listed in, or eligible for listing in, the California Register of Historic Resources (CRHR); (2) a resource included in a local register of historical or identified as significant in an historical resource surveys; and (3) any resource that a lead agency determines to be historically significant for the purposes of CEQA, when supported by substantial evidence in light of the whole record. The CRHR was created to identify resources deemed worthy of preservation on a State level and was modeled closely after the National Register. The criteria, which are nearly identical to those of the National Register but focus on resources of statewide significance (see State CEQA Guidelines § 15064.5, subd. (a)(3)), are defined as any resource that meets any of the following criteria: (1) Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage; (2) Is associated with lives of persons important in our past; (3) Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or (4) Has yielded, or may be likely to yield, information important in prehistory or history. Properties listed, or formally designated as eligible for listing, on the National Register are automatically listed on the CRHR, as are certain State Landmarks and Points of Interest. A lead agency is not precluded from determining that the resource may be an historical resource as defined in Public Resources Code sections 5020.1, subdivision (j), or 5024.1 (State CEQA Guidelines § 15064.5, subd. (a)(4)).



**Table 3.5-2. Laws, Regulations, and Policies (Cultural and Paleontological)**

<b>CA</b>	Coastal Act Chapter 3 policies (see also Table 1-2)	Section 30244 states: Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.
<b>CA</b>	Assembly Bill (AB) 52 (Gatto, Stats. 2014, ch. 532)	AB 52 (effective July 1, 2015) adds sections 21073, 21074, 21080.3.1, 21080.3.2, 21082.3, 21083.09, 21084.2, and 21084.3 to CEQA, relating to consultation with California Native American tribes, consideration of tribal cultural resources, and confidentiality. The definition of tribal cultural resources considers tribal cultural values in addition to scientific and archaeological values when determining impacts and mitigation. AB 52 provides procedural and substantive requirements for lead agency consultation with California Native American tribes and consideration of effects on tribal cultural resources, as well as examples of mitigation measures to avoid or minimize impacts to tribal cultural resources. AB 52 establishes that if a project may cause a substantial adverse change in the significance of a tribal cultural resource, that project may have a significant effect on the environment. Lead agencies must avoid damaging effects to tribal cultural resources, when feasible, and shall keep information submitted by tribes confidential.
<b>CA</b>	Public Resources Code section 5097.98	This code states protocol for notifying the most likely descendent from the deceased if human remains are determined to be Native American in origin. It also provides mandated measures for appropriate treatment and disposition of exhumed remains.
<b>CA</b>	Health and Safety Code section 7050.5	This code states that if human remains are exposed during construction, no further disturbance shall occur until the County Coroner has made the necessary findings as to origin and disposition pursuant to Public Resources Code section 5097.998. The Coroner has 24 hours to notify the Native American Heritage Commission (NAHC) if the remains are determined to be of Native American descent. The NAHC will contact most likely descendants, who may recommend how to proceed.

### 1 3.5.2.2 Local

2 The City of Carlsbad (2006) General Plan OSCE contains the following historical,  
3 cultural, and special resource protection goals, objectives, and policies relevant to  
4 onshore Project activities.

- 5 • Goal A.1: A city in which its existing and continuing heritage is protected,  
6 preserved, recognized and enhanced.
- 7 • Goal A.5: A city that preserves, where possible, historic, cultural, archeological,  
8 paleontological, and educational resources.
- 9 • Objective B.1: To encourage property owners to utilize all available incentives for  
10 the preservation of historic resources.
- 11 • Objective B.3: To preserve areas of unique scenic, historical, archeological,  
12 paleontological and cultural value, and where possible, provide public access to  
13 these areas.
- 14 • Objective B.6: To minimize environmental impacts to sensitive resources within  
15 the City.

- Policy C.10: Prohibit the alteration of properties of state or national significance, unless reviewed under requirements of the California Environmental Quality Act.
- Policy C.19: Preserve natural resources by: ... protecting archeological and paleontological resources.

### 3.5.3 Impact Analysis

#### ***a. Cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5?***

**No Impact.** Project implementation would not impact known shipwrecks or other known historically significant sites. Although the EPS MOT was built in 1953 and is over 60 years old, as indicated above, it does not meet the criteria for listing in the NRHP or California Register of Historic Resources. Therefore, the Project would not impact historical resources.

#### ***b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to § 15064.5?***

**Less than Significant with Mitigation.** The EPS is located within a general area considered sensitive for archaeological resources, and onshore decommissioning work may have the potential to impact known (CA-SDI-210) or unknown archaeological resources if earth disturbances extend outside of the previously disturbed construction areas, vertically or horizontally.

To ensure that potential impacts to archaeological resources are avoided or mitigated to less than significant, the following measures would be implemented.

**MM CUL-1: Cultural Resource Training.** A pre-construction meeting, inclusive of agency personnel, shall be organized to educate onsite construction personnel as to the sensitivity of archaeological and tribal cultural resources in the area. If agency personnel cannot attend, the meeting shall be held and documentation of the meeting shall be submitted to those agencies. The Applicant's personnel shall instruct all construction and Project personnel to avoid removing cultural materials from the Project site. Evidence of compliance with this mitigation measure shall be documented, and provided to California State Lands Commission staff, prior to onshore work.

**MM CUL-2: Archaeological and Tribal Cultural Resource Monitoring.** All construction will be confined to previously disturbed areas within the beach valve pit if feasible; however, to ensure no previously unknown archaeological or tribal cultural resources are unintentionally damaged, all excavation shall be monitored by a professional archaeologist and a Native American representative, who shall

1 have the authority to temporarily halt or redirect Project construction in the event  
2 that potentially significant cultural resources are exposed.

3 **MM CUL-3: Redirect Work if Previously Unknown Archaeological or Tribal**  
4 **Cultural Resources are Discovered.** In the event that potentially significant  
5 archaeological or tribal cultural resources are discovered any time during  
6 construction, all earth disturbing work within the vicinity of the discovery shall be  
7 temporarily suspended or redirected until a professional archaeologist and a  
8 representative from the culturally affiliated California Native American tribe(s)  
9 (tribal representative) as determined by the Native American Heritage  
10 Commission have evaluated the nature and significance of the discovery. In the  
11 event that a potentially significant archaeological or tribal cultural resource is  
12 discovered, Cabrillo Power I LLC, the California State Lands Commission  
13 (CSLC), and any local, State or Federal agency with approval or permitting  
14 authority over the Project that has requested/required such notification shall be  
15 notified.

16 Impacts to previously unknown significant archaeological or tribal cultural  
17 resources shall be avoided through preservation in place if feasible. Damaging  
18 effects to tribal cultural resources will be avoided or minimized following the  
19 measures identified in Public Resources Code section 21084.3, subdivision (b), if  
20 feasible, unless other measures are mutually agreed to by the lead archaeologist  
21 and tribal representative that would be as or more effective.

22 If the lead archaeologist and tribal representative(s) mutually agree that  
23 damaging effects to tribal cultural resources will be avoided or minimized, then  
24 work in the area may resume. If the lead archaeologist and tribal  
25 representative(s) do not agree, the CSLC's tribal liaison will attempt to resolve  
26 the issue. If the tribal liaison cannot resolve the issue, the tribal liaison will submit  
27 the matter to the CSLC's Executive Officer for resolution. A Native American  
28 representative shall monitor any mitigation work associated with Native American  
29 cultural material.

30 ***c) Cause a substantial adverse change in the significance of a tribal cultural***  
31 ***resource as defined in Public Resources Code section 21074?***

32 **Less than Significant with Mitigation.** As discussed in Section 3.5.1.2, Tribal Cultural  
33 Resources:

- 34 • A Sacred Lands File search conducted by the NAHC did not identify Native  
35 American cultural places or properties within 0.5 mile of the Project footprint;
- 36 • The NAHC noted that the Project site is located several miles north of a known  
37 underwater village and that the area around the Agua Hedionda Lagoon to the  
38 north of the Project site is considered very culturally sensitive; and
- 39 • The NAHC provided a contact list of Native American representatives to Conejo  
40 to gather information on cultural sites near the Project site (see Appendix K).

1 Conejo contacted the Native American representatives on January 30, 2013, and  
2 received three responses. These responses indicated that although the MOT is not  
3 within a recognized tribal Traditional Use Area, there are several Native American sites  
4 located around Agua Hedionda Lagoon, and scattered marine shell debris has been  
5 seen within the power plant. Given the potential area's archaeological sensitivity, it was  
6 recommended that a Native American representative monitor any earth disturbances  
7 associated with the Project, even in previously disturbed onshore areas. Additionally,  
8 the Native American representatives requested to be kept informed of any documented  
9 cultural resources at the Project site.

10 AB 52 made changes to CEQA regarding tribal cultural resources and consultation with  
11 California Native American Tribes who have previously requested to be notified of  
12 projects in the geographic area traditionally and culturally affiliated with that tribe (see  
13 Table 3.5-2). Although CSLC staff has not received written requests for notification, staff  
14 notified the Native American representatives on the NAHC contact list on October 2,  
15 2015, to engage with those tribes proactively to ensure they have the opportunity to  
16 provide meaningful input on the Project's potential effects (see Appendix K).

17 To ensure that potential impacts to tribal cultural resources are avoided or mitigated to  
18 less than significant, all onsite construction personnel will be educated on the potential  
19 for and sensitivity of tribal cultural resources in the area (**MM CUL-1**). Additionally, all  
20 construction will be confined to previously disturbed areas within the beach valve pit if  
21 feasible; however, to ensure no previously unknown tribal cultural resources are  
22 unintentionally damaged, all excavation shall be monitored by a professional  
23 archaeologist and a Native American representative who shall have the authority to  
24 temporarily halt or redirect Project construction in the event that potentially significant  
25 tribal cultural resources are exposed (**MM CUL-2**). In the event tribal cultural resources  
26 are discovered, **MM CUL-3** will be implemented and a Native American representative  
27 will monitor any mitigation work associated with Native American cultural material.  
28 Therefore, with the implementation of **MM CUL-1**, **MM CUL-2**, and **MM CUL-3**, potential  
29 impacts to tribal cultural resources at the Project site will be avoided or reduced to less  
30 than significant.

31 ***d) Directly or indirectly destroy a unique paleontological resource or site or***  
32 ***unique geologic feature?***

33 **Less than Significant with Mitigation.** Due to the high paleontological sensitivity in the  
34 area, any Project activities requiring excavation of previously undisturbed sedimentary  
35 formations onshore would have a potential for impacting paleontological resources.

36 Potential impacts to paleontological resources can be avoided by avoiding disturbance  
37 of previously undisturbed native soils as identified above in **MM CUL-2**. If impacts

cannot be fully mitigated with **MM CUL-2**, the following measure would be implemented to avoid or minimize potential impacts to less than significant.

**MM CUL-4: Paleontological Resource Evaluation and Mitigation Plan.** A qualified paleontologist shall be retained to evaluate the onshore activities and develop a Paleontological Resource Evaluation and Mitigation Plan if Project activities extend into previously undisturbed sedimentary formations. The mitigation plan shall include construction monitoring and collection and archiving of any paleontological finds.

***e) Disturb any human remains, including those interred outside of formal cemeteries?***

**Less than Significant with Mitigation.** The Project is not expected to impact human burials; however, in the unanticipated event that burials are encountered they must be managed in accordance with state law.

To ensure that the potential impacts to any unanticipated burials encountered during Project activities are avoided or mitigated to less than significant, the following measure would be implemented.

**MM CUL-5: Proper Disposition of Human Remains.** If human remains are unearthed, State Health and Safety Code section 7050.5 requires that no further disturbance shall occur until the County Coroner has made the necessary findings as to origin and disposition pursuant to Public Resources Code section 5097.98. If the remains are determined to be of Native American descent, the coroner has 24 hours to notify the Native American Heritage Commission. Cabrillo Power I LLC and California State Lands Commission staff shall be notified immediately of the discovery.

### **3.5.4 Mitigation Summary**

Implementation of the following mitigation measure(s) would reduce the potential for Project-related impacts to cultural and paleontological resources to less than significant.

- MM CUL-1: Cultural Resource Training.
- MM CUL-2: Archaeological and Tribal Cultural Resource Monitoring.
- MM CUL-3: Redirect Work if Previously Unknown Archaeological or Tribal Cultural Resources are Discovered.
- MM CUL-4: Paleontological Resource Evaluation and Mitigation Plan.
- MM CUL-5: Proper Disposition of Human Remains.